

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
AT MARTINSBURG**

ROCK MORRIS,

Plaintiff,

v.

**CIVIL ACTION NO. 1:04CV217
(BROADWATER)**

**JO ANNE B. BARNHART,
Commissioner, Social Security
Administration,**

Defendant.

ORDER ADOPTING REPORT AND RECOMMENDATION

On this day the above styled case came before the Court for consideration of the Report and Recommendation of Magistrate Judge John S. Kaull, dated November 18, 2005. The Court notes that neither party filed objections to the Report.

The Court, after reviewing the above, is of the opinion that the Magistrate Judge's Report and Recommendation should be and is hereby **ORDERED** adopted. The Court, further **ORDERS** that

- 1) the defendant's motion for summary judgment (Document # 13) is **DENIED**;
- 2) the plaintiff's motion for summary judgment (Document # 12) is **GRANTED IN PART** in that the Commissioner's decision is reversed and this matter is remanded to the commissioner for further proceedings consistent and in accord with the Magistrate Judge's Report; and
- 3) this action is **DISMISSED WITH PREJUDICE** based on the reasons set forth in the Magistrate Judge's Report and Recommendation, and **STRICKEN** from the active docket of this Court.

It is so ORDERED.

The Clerk is directed to transmit true copies of this Order to the plaintiff and all counsel of record herein.

DATED this 9th day of December 2005.


**W. CRAIG BROADWATER
UNITED STATES DISTRICT JUDGE**

